

(1989) 09 KAR CK 0021

In the Karnataka High Court

Case No : Income-tax Reference Case No. 76 of 1981

Commissioner of Income Tax

APPELLANT

Vs

Nippon Electronics (India) Pvt. Ltd.

RESPONDENT

Date of Decision : 01-09-1989

Acts Referred:

Income Tax Act, 1961 — Section 148, 80 J, 80 J (1), 80 J (4) (ii)

Citation : (1990) 81 CTR 24 : (1990) 181 ITR 518 : (1990) 1 KarLJ 8 : (1990) 51 TAXMAN 187

Hon'ble Judges : S. Rajendra Babu, J;M. Rama Jois, J

Bench : Division Bench

Advocate : K. Srinivasan and H. Raghavendra Rao, for the Appellant; K.P. Prasad, for the Respondent

Judgement

1. For the accounting year ending on June 30, 1972, deduction u/s 80J of the Income Tax Act, 1961 (hereinafter called "the Act"), was allowed to the assessee. The assessment was reopened u/s 148 of the Act and the relief granted u/s 80J of the Act was cancelled. The Income Tax Officer took the view that, in the initial year 1971-72, the assessee is not entitled to the relief u/s 80J of the Act as the value of the old assets exceeded the limit of 20% as stipulated in section 80J(4) (ii) of the Act and negated the contention that the percentage should be worked for the year in question and not as in the initial assessment year. Against that order, the assessee filed an appeal to the Appellate Assistant Commissioner, who having held that eligibility had to be considered each year on the basis of the then prevalent circumstances, found that the assessee was eligible to the benefit u/s 80J of the Act. The Revenue being aggrieved by that order filed unsuccessfully second appeal before the Tribunal. At the instance of the Revenue, the Tribunal has made this reference for our opinion u/s 256(1) of the Act on the following question of law :

"Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in law in holding that the assessee is entitled to get

the relief u/s 80J notwithstanding the fact that the conditions stipulated u/s 80J(4)(ii) were not fulfilled in the initial year ?"

2. The contention raised on behalf of the Revenue is that, u/s 80J(1) of the Act, the benefit of tax concession is given subject to the conditions mentioned in sub-sections (2) and (4) thereof. Sub-section (2) fixes the parameter of a block period of five years for which the benefit is available, as the commencement of the benefit will be from the year relevant to the previous year in which the industrial undertaking begins to manufacture, which is referred to as the initial assessment year, and each of the four assessment years immediately succeeding the initial assessment year. The condition u/s 80J(4)(ii) of the Act is that it is not formed by the transfer to a new business of machinery or plant previously used for any purpose. This clause has been further elaborated in Explanation 2 thereof to mean that the total value of the machinery or plant or part so transferred does not exceed twenty per cent. of the total value of the machinery or plant used in the business, in which event it is taken that the condition has been complied with in that the new industrial undertaking must have been formed by the transfer to new business of such machinery. It is, therefore, contended that, for the purposes of deductions u/s 80J, the only thing relevant is the year in which manufacture commenced and if the undertaking fulfills the conditions mentioned in sub-section (4), the undertaking becomes eligible and if that requirement is not fulfilled in the first year, even if in any subsequent year the proportion of the value of the old assets is made to fall below 20 per cent., by making fresh investment so as to fulfill the requirement mentioned in Explanation 2, the same is of no consequence. The Tribunal rejected this contention following a decision of the Gujarat High Court in Commissioner of Income Tax, Gujarat-I Vs. Satellite Engineering Ltd., . The Gujarat High Court proceeded, in that case, on the basis that the benefit u/s 80J will be available for a period of five consecutive years and the starting point of such period will be the year of manufacture or production of the undertaking and if that condition laid down in the section is not satisfied in the very year of commencement of manufacture or production, the benefit of tax holiday will be available provided that the condition is satisfied in the course of the subsequent four years.

3. Sri K. R. Prasad, learned counsel, whom we requested to assist the court, as the assessee remained unrepresented, submitted that the said decision of the Gujarat High Court stands to reason and that the finding of the Tribunal must be affirmed. We are grateful to him for the assistance rendered by him. His contention is that each assessment year being a separate unit for the purpose of assessment, deductions will have to be given in the same manner as provided in section 80J(1) of the Act and 6 per cent. deduction is granted on the capital employed in the industrial undertaking. Therefore, he submitted, the contrary view, that the parameters" are fixed by Explanation 2 and the benefit is limited only to the initial year of commencement of the manufacture or production and extending the benefit to a further period of four year, will not be correct.

4. The controversy with which we are concerned in this reference is whether an industrial undertaking which did not satisfy the prescribed conditions to get the relief u/s 80J of the Act in the initial year of its manufacture or production can claim such relief if those conditions are satisfied in the subsequent four years. The object of section 80J(1) of the Act has been explained by the Supreme Court in *Textile Machinery Corporation Limited, Calcutta Vs. The Commissioner of Income Tax, West Bengal*, as encouraging the setting up of new industrial undertakings by offering tax incentives. The relief that is granted u/s 80J(1) of the Act is in respect of profits and gains of an undertaking to the extent it does not exceed the amount calculated at the rate of 6 per cent. per annum on the capital employed in such industrial undertaking. The percentage of relief is at the rate of 7 1/2 per cent. per annum in the case of companies which start functioning on or after March 31, 1976, and at the rate of 6 per cent. per annum in the case of other companies. There are two aspects to be noticed in this connection. First, the percentage is to be worked out on a time basis depending on the whole or part of the previous year in which any item of capital is employed in the undertaking at the rate of 6 per cent. The second is that the capital employed in the undertaking during the previous year relevant to the assessment year has to be computed in the manner specified in the provision or under the Rules, as the case may be. After the capital is so computed, tax relief to the extent of 6 per cent. or 7 1/2 per cent. thereof is to be allowed. The expression "per annum" cannot be understood in contrast with any broken period, that is, the relief cannot be restricted to the period for which assets were actually in use. The expression "aforesaid" has been added only to ensure that the assessee gets the relief for each of the five years as available under the section. Deduction u/s 80J(1) of the Act is for the assessment year relevant to the previous year in which the industrial undertaking begins to manufacture articles and for the next four assessment years (or six years in the case of the co-operative society). Section 80J(4) of the Act provides for certain conditions on the fulfillment of which the industrial undertaking becomes entitled to the benefit available u/s 80J(1) of the Act. One of the conditions is that an undertaking, to be eligible for the benefit of the relief u/s 80J(1), is not formed by the transfer to a new business of machinery or plant previously used for any purpose. Explanation 2 of sub-section (4) of section 80J provides that where, in the case of an industrial undertaking, any machinery or plant or any part thereof previously used for any purpose was transferred to a new business and the total value of the machinery or plant or part so transferred does not exceed twenty per cent. of the total value of the machinery or plant used in the business, then, for the purposes of clause (ii) of this sub-section, the condition specified therein shall be deemed to have been complied with and the total value of the machinery or plant or part so transferred shall not be taken into account in computing the capital employed in the industrial undertaking.

5. The eligibility for earning the benefit u/s 80J(1) of the Act is provided in section 80J(4)(ii) of the Act. The condition is that the undertaking must not have

been formed by the transfer to the new business of machinery or plant previously used for any purpose. The expression "formed" in clause (ii) of sub-section (4) is concluded by Explanation 2 which substitutes an arithmetical formula for understanding whether this condition has been satisfied or broken in a given case. The formula is, where the value of the old machinery or plant that has been transferred is 20 per cent., or less then 20 per cent., of the total value of the machinery or plant used in the business, then this condition is deemed to have been complied with. But the value of the assets in question transferred shall not be taken into account in computing the capital employed in the undertaking. If such value exceeds 20 per cent. the relief would not be available and if, on the other hand, such value is within 20 per cent. or less, the relief is available. Reading clause (ii) with Explanation 2 makes it clear that the assessee can be denied the exemption only where the assets transferred to the new undertaking constitute more than 20 per cent. of the total value of the assets used in the new business.

6. The word "formed" also suggests that the transfer contemplated is one at the time of formation of the new undertaking. The eligibility for exemption has to be tested in the initial assessment year. Therefore, the exemption would not be available if, in the initial assessment year, the proportion of old assets transferred or utilised for the new business is above 20 per cent. of the total investment, though in any subsequent year, even if it be within five years, new investment is made so as to reduce the proportion of the value of the old assets below 20 per cent. Therefore, the eligibility stands determined in the initial assessment year of manufacture, such benefit could be availed of in any of the succeeding four years. In the present case, admittedly, the assessee being not eligible in the initial year, the question of granting exemption in subsequent years does not arise. We, therefore, respectfully disagree with the decision of the Gujarat High Court and answer the question in the negative and in favour of the Revenue.